

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW MEXICO**

In re: MICHAEL MARK MULHOLLAND and

No. 7-10-14587 JR

<b>Confirmation Number:</b>	6557
<b>Title of Invention:</b>	Light emitting device
<b>First Named Inventor/Applicant Name:</b>	Daisuke Kumaki
<b>Customer Number:</b>	26568
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<b>Attorney Docket Number:</b>	0553-0505
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**File Listing:**

Document Number	Document Description	File Name	File Size(Bytes)/Message Digest	Multi Part/.zip	Pages (if appl.)
1	Information Disclosure Statement Letter	IDScoverLetterSEL505.pdf	110892 f4c41eb60038524ed819ac12029dee7e46f2 1289	no	3

**Warnings:**

**Information:**

2	1.501 Submission by Patent Owner	1449SEL505.pdf	80699 521614defa0cab1a5fd891c0a39e78098c9a 86fa	no	1
<b>Warnings:</b>					
<b>Information:</b>					
3	Foreign Reference	CN1422104A.pdf	4827004 5c94b1fc362a5d24508fd2319151165a9516 0c7f	no	75
<b>Warnings:</b>					
<b>Information:</b>					
4	NPL Documents	ChineseOfficeActionSEL505.pdf	1542652 675d4be019f91998241700b4a02daa7ea78 7cd2e	no	18
<b>Warnings:</b>					
<b>Information:</b>					
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issue is a judicial lien subject to avoidance under 11 U.S.C. § 522(f).<sup>1</sup> Impairment is determined in accordance with the formula set out in 11 U.S.C. § 522(f)(2)(A), which provides:

[A] lien shall be considered to impair an exemption to the extent that the sum of—  
(i) the lien;  
(ii) all other liens on the property; and  
(iii) the amount of the exemption that the debtor could claim if there were no liens on the property;  
exceeds the value that the debtor's interest in the property would have in the absence of any liens.

11 U.S.C. § 522(f)(2)(A).

The amount of the liens and the value of the property are to be determined as of the petition date for purposes of applying 11 U.S.C. § 522(f).<sup>2</sup>

Here, the stipulated facts are that Lending Tree's mortgage lien was \$221,938.12 as of January 28, 2011, and that the fair market value of the Property as of the petition date was 254,000.00. The petition date was September 8, 2010. Because January 28, 2011 is *after* the petition date and there is no evidence of a post-petition pay down of the note secured by the mortgage, the Court will presume that the amount of Lending Tree's outstanding mortgage lien was not less than \$221,938.12 as of the petition date. Application of these stipulated facts to the formula found in 11 U.S.C. § 522(f)(2)(A) yields the following result: the amount of the mortgage (\$221,938.12) plus the amount of the exemption that the Debtors could claim if there were no liens on the Property (\$120,000.00) exceeds the total value of the Property as of the

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<sup>1</sup>Section 522(f)(1) applies to judicial liens:

... the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled ... if such lien is —

(A) a judicial lien, other than a judicial lien that secures a debtor of a kind that is specified in section 523(a)(5)[.]

11 U.S.C. § 522(f)(1)(A).

<sup>2</sup> See *In re Powell*, 399 B.R. 190, 198 (Bankr.W.D.Tex. 2008)(stating that “[t]he petition date is the operative date to make all § 522(f) determinations,” so that the value of the liens, the value of the property and the amount of the exemption are all measured as of the date of the filing of the petition.”)(quoting *In re Salanoa*, 263 B.R. 120, 123 (Bankr.S.D.Cal. 2001)(remaining citation omitted); *In re Hall*, 327 B.R. 424, 427 (Bankr.W.D.Mo. 2005)(stating that “the appropriate time for determining the value of the property subject to a lien which the Debtors seek to avoid under § 522(f) is the date on which the petition was filed.”)(citation omitted).

petition date (\$254,000), by more than \$87,000.00.<sup>3</sup> Thus, even though the parties did not stipulate as to the amount of the Bishops' judicial lien, the Bishops' judicial lien necessarily impairs the Debtors' homestead exemption.<sup>4</sup> Consequently, the Debtors are entitled to avoid the Bishops' judicial lien.

The Bishops' argument that the denial of the Debtors' discharge prevents the Debtors from avoiding their judicial lien is unavailing. In *In re Allen*, 217 B.R. 945 (Bankr.M.D.Fla. 1998) a judgment creditor objected to the debtor's motion to avoid lien, arguing that the prior denial of the debtor's discharge precluded the debtor from avoiding the creditor's lien. The *Allen* court held that the debtor was entitled to avoid a judicial lien under 11 U.S.C. § 522, even if the debtor's discharge has been denied, reasoning, in part, that the language of 11 U.S.C. § 522(f) does not include a requirement that the debtor receive a discharge in order to obtain lien avoidance. *Allen*, 217 B.R. at 950. The *Allen* court reasoned further that allowing a debtor to avoid a lien despite having been denied a discharge "does not produce a result inconsistent with the policies underlying the Bankruptcy Code" because "protection of the fresh start is not the exclusive goal of § 522(f)." *Id.*<sup>5</sup> The additional goal of protecting a debtor's exemptions can be accomplished regardless of whether the debtor receives a discharge. *Id.*<sup>6</sup> This Court agrees.

A debtor's ability to avoid a judicial lien consistent with the requirements of 11 U.S.C. § 522(f) "is not dependent upon the debtor receiving a discharge, and consequently, the denial of a

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<sup>3</sup>  $\$221,938.12 + 120,000.00 = \$341,938.12$ .  $\$341,938.12 - \$254,000$  (FMV of the Property) =  $\$87,938.12$ .

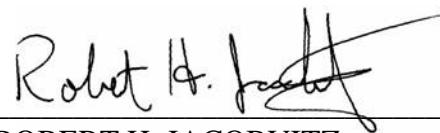
<sup>4</sup> Cf. *In re Gregory Rockhouse Ranch*, 380 B.R. 258, 265 (Bankr.D.N.M. 2007)(explaining that the calculation under 11 U.S.C. § 522(f) is "made by adding the amount of the homestead exemption, the judgment lien, and the balance of the debt secured by other liens, and avoiding the lien to the extent the sum exceeds the value of the property.")(citing *In re Pepper*, 210 B.R. 480,485 (Bankr.D.Colo. 1997)).

<sup>5</sup> *Allen* also cites several cases that similarly hold with regard to avoidance of judicial liens even when the specific debt underlying the judicial lien is excepted from the debtor's discharge under 11 U.S.C. § 523. *Allen*, 217 B.R. at 949 (collecting cases). Cf. *In re Vaughan*, 311 B.R. 573 (10<sup>th</sup> Cir. BAP 2004), *aff'd*, 241 Fed.Appx. 478 (10<sup>th</sup> Cir. 2007)(unpublished)(holding that the debtors could avoid, on exemption impairment grounds, a judicial lien relating to a debt the bankruptcy court determined was non-dischargeable, even though the lien was recorded post-petition).

<sup>6</sup> See also, *Vaughan*, 311 B.R. at 579 (observing that "[t]he fact that Section 522(c) expressly excepts a few debts that are nondischargeable under Section 523, but makes no mention of the others, evidences Congressional intent to insulate exempt property from most nondischargeable debts.").

debtor's discharge does not bar the debtor from avoiding a lien pursuant to § 522(f)." *Allen*, 217 B.R. at 949. The Bishops' judicial lien is, therefore, subject to avoidance, even though the denial of the Debtors' discharge permits the Bishops to resume collection efforts to realize their debt against the Debtors following the closing of the Debtors' bankruptcy case.

WHEREFORE, IT IS HEREBY ORDERED that the Motion is GRANTED. The Bishops' judicial lien, recorded in Book 2009, page 8527, in the Office of the County Clerk of Lincoln County, New Mexico, is avoided.



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ROBERT H. JACOBVITZ  
United States Bankruptcy Judge

Date entered on docket: February 23, 2012

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